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OPINIONS BELOW

The opinion of the Circuit Court of Appeals is reported in 21 F. 2d 28.

The opinion of the District Court for the Eastern District of Wisconsin is reported in 13 F. 2d 662.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Supreme Court of the United States

October Term, 1927.

No. 636.

ANNA MARIE MANEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

JURISDICTION OF THIS COURT.

This matter is before this Court on a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, to review the determination of said court rendered June 16, 1927 (R. 23 to 28), (from which a rehearing was denied September 22, 1927 (R. 34), reversing the judgment of the United States District Court for the Eastern District of Wis-

consin rendered April 6, 1926 (R. 6 to 17), the latter judgment dismissing the Government's suit for cancellation of the certificate of naturalization theretofore granted this petitioner, Anna Marie Mancy.

STATEMENT OF THE CASE.

The suit of the Government for cancellation is based solely on the ground that the "certificate of arrival" was not filed or physically attached to the petition for naturalization at the time said petition was filed, though subsequently supplied by the Government and attached to the petition by order of the trial court, and was present and attached to the petition before the trial court issued its decree of naturalization (R. 2).

The material facts, briefly, are stated in the course of Judge Geiger's opinion as follows:

> (R. 6 and 7) "The petition for naturalization was filed November 13, 1923, and upon it, as well as upon its supporting proofs, her qualifications and right to admission are conceded, save for the following:
>
> At the time of filing the petition she did not present nor file therewith the 'arrival' certificate specified in paragraph 2, Sec. 4, of the Naturalization Act (34 Stat. 596), viz.:
>
> 'At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Labor * * * stating the date, place and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made part of said petition.'
>
> But, twenty days thereafter—that is, on December 3, 1923—such certificate was mailed to the

clerk by the district director of naturalization, acting, I assume, for the Department of Labor, and, it would seem, on behalf of, or at least in the interest of, the petitioner. The clerk received the certificate and filed it, certainly in the sense of taking it into official custody in connection with the petition previously filed as the initial step of a naturalization proceeding. He did not then physically attach it to the petition. But the latter was docketed, notice thereof given as required by law, and it took its place upon the regular calendar for hearings to be had February 11, 1924. On that day the Government appeared, filing a motion, viz.:

'This day came the naturalization examiner, Mr. H. L. Roethe, and moved the court to dismiss the above entitled petition, for the reason that the certificate of arrival was not attached to said petition at the time the petition was filed, or to have said petition marked 'spoiled' for the same reason.'

The motion thus made was overruled. (R. 8.)

At the time of the hearing, the District Court had before it the application, the applicant, the required number of witnesses, as well as the certificate of arrival.

No appeal was taken by the Government from the decree of naturalization.

One year and four months later, June, 1925, the Government instituted an independent action under Section 15 of the Naturalization Act, to set aside the certificate of naturalization so granted, on the ground that the same had been "illegally procured," the alleged illegality being that the certificate of arrival was not physically attached to the petition when filed, but was attached by order of the District Court at the time

of hearing of the petition. (R. 2.) On April 2, 1926, the District Court denied the petition of the Government for a cancellation of the certificate (R. 17) and rendered an opinion in support of this conclusion (13 F. (2d) 662). (R. 6 to 17, incl.)

An appeal was then taken by the Government to the Circuit Court of Appeals for the Seventh District (R. 17) and thereafter said Circuit Court rendered an opinion reversing the decree of said District Court (R. 23 to 28), from which opinion Judge Alschuler dissented in a written opinion (R. 28 to 32), (21 F. (2d) 28). A timely petition for rehearing was made to, considered by and denied by said Circuit Court on September 22, 1927 (R. 34).

A petition for writ of certiorari was then duly filed before this Court and allowed January 9, 1928 (R. 35).

STATUTES INVOLVED

Section 4 of the Naturalization Act of June 29, 1906, C. 3592, 34 Stat. p. 596 (U. S. C., Title 8, Sec. 380), so far as pertinent reads as follows:

> At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Section 11 of the same act reads as follows:

> That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the

purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Section 15 of the same act (p. 601) as amended (U. S. C., Title 8, Sec. 405), so far as pertinent (first paragraph only) reads as follows:

That it shal be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal service in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

ARGUMENT.

I.

THE NATURE OF THE PROCEEDING AND THE COURTS' POWERS.

The prevailing opinion of the Circuit Court in this case having raised a question of the trial court's jurisdiction of the petition for naturalization, it is necessary to briefly discuss the nature of the proceedings. In passing upon this point, following a quotation from United States vs. Ginsberg, 243 U. S. 472, 473, the Circuit Court says:

> (R. 25) "This language seems to say that the form and contents of the alien's sworn petition to the Court and the manner of its preparation, filing and presentation, shall be in exact accordance with the provisions of the act and not otherwise, before there is any power in the Court to act upon it."

A. ***A Naturalization Case is a Judicial Proceeding of Which the United States District Courts Have Jurisdiction.***

The major premise of appellant's contention sustaining the District Court's jurisdiction is the rule that a naturalization case is a judicial proceeding, a proposition now established beyond question.

Johannessen vs. United States, 225 U. S. 227.
Tutun vs. United States, 270 U. S. 568.

Since a naturalization case is a judicial proceeding and by statute within the jurisdiction of the United States District Courts, the next question, in view of the contention of the Circuit Court of Appeals, is whether the trial court had jurisdiction of this particular petition. The principles generally applicable to questions of jurisdiction of the district courts are equally pertinent in order to ascertain whether the trial court had jurisdiction of this particular matter.

This Court has held in numerous cases that a complaint which substantially sets forth a claim or right within the jurisdiction of the District Court, whether that complaint is a model form of pleading, whether it be subject to motions to make more specific and definite, or whether it be subject to demurrer, unless it be frivolous and entirely lacking in substance, is within the jurisdiction of the District Court as such so long as it informs the Court that the relief sought is within that class of matters upon which the District Court has power to act.

Weiland vs. Pioneer Irrig. Co., 259 U. S. 498 (a 501.

Flanders vs. Coleman, 250 U. S. 223 (a 227.

Hart vs. Keith Exchange, 262 U. S. 271 (a 273

Lovell vs. Newman, 227 U. S. 412 (a 421.

Cases Before This Court Involving Cancellation of Certificates Have Not Denied the Jurisdiction of the District Courts.

In the leading cases before this Court involving the Naturalization Act and the right of the Government to institute independent actions under Section 15 for cancellation of certificates of naturalization illegally obtained, no contention has been made and no inference can be read into these decisions to the effect that this Court intended to hold that the trial courts were without jurisdiction to act in the proceedings. On the contrary, the language and spirit of the naturalization cases before this Court wherein judgments of cancellation have been sustained clearly indicate that the grounds for sustaining decrees of cancellation do not include any finding that the Naturalization Courts were without power to act, but, rather demonstrate that the rulings are solely because the District Courts granted certificates of naturalization to persons not entitled to receive the same for lack of competent proof, or because the petitioners were not within the class admissible to citizenship, or other substantive reasons.

We feel confident that a careful examination of these cases, from *Johannessen vs. United States*, 225 U. S. 227 through the late case to *Tutun vs. United States*, 270 U. S. 568, which are fully discussed subsequently in this brief, sustain appellant's contention that they were decided on the facts and not on the ground of jurisdiction.

B. *The Petition Having Set Forth a Substantial Claim Under a Federal Statute was a Case Within the Jurisdiction of the District Court.*

The jurisdiction in the case at bar is established by the general principles as laid down by this Court.

The case of *Binderup vs. Pathe Exchange*, 263 U. S. 291, involved an action under the anti-trust act based on a conspiracy in violation of the act. The Court's opinion clearly sets forth the proposition which this petitioner contends is the law of this case. The Court says:

> (263 U. S. 305) "Jurisdiction is the power to decide a judicial controversy and includes questions of law as well as of fact. A complaint setting forth a substantial claim under a federal statute presents a case within the jurisdiction of the Court as a Federal Court, and this jurisdiction cannot be made to stand or fall upon the way the Court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way, upon either question, is predicated upon the existence of jurisdiction, not upon the absence of it. Jurisdiction as distinguished from merits is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous, or, in other words, is plainly without color of merit. (Cases cited.) In that event the claim of federal right under the statute is a mere pretense,

and, in effect, is no claim at all. Plainly there is no such want of substance asserted here."

Again in *General Investment Co. vs. New York Central Railroad Co.*, 271 U. S. 228, this court said in dealing with a similar question:

> (271 U. S. 230) "By jurisdiction we mean power to entertain the suit; consider the merits and render a binding decision thereon; and by merits we mean the various elements which enter into or qualify the plaintiff's right to the relief sought. There may be jurisdiction and yet an absence of merits * * *. Whether the plaintiff seeking such relief has the requisite standing is a question going to the merits and its determination is an exercise of jurisdiction. (Cases cited.) If it be resolved against him, the appropriate decree is a dismissal for want of merits, not for want of jurisdiction."
>
> See, too, *Swafford vs. Templeton*, 185 U. S. 487 (at 493, 494).

The application of these principles to the case at bar readily appear from a reading of the facts.

C. *The Duty of Passing Upon the Merits of Petition Presupposes Trial Court's Jurisdiction.*

If the United States District Court had no jurisdiction of the petition, then it follows that the Clerk of the Court had no right to accept the same for filing or to take the fee, and the trial court was without power to pass upon the merits of the application. It would have had before it what might be in the nature of a spurious paper. Clearly no such contention can

be maintained in view of what this Court has said in *Tutun vs. United States*, 270 U. S. 568, wherein it announced:

> (270 U. S. 578) "* * * there is a statutory right in the alien to submit his petition and evidence to a Court to have that tribunal pass upon them and, if the requisite facts are established, to receive the certificate. (See U. S. vs. Shanahan, 232 Fed. 169, 171.) * * * There is, of course, no 'right to naturalization unless all statutory requirements are complied with.' (Cases cited.) The applicant for citizenship, like other suitors who institute proceedings in a court of justice to secure the determination of an asserted right, must allege in his petition the fulfillment of all conditions upon the existence of which the alleged right is made dependent; and he must establish these allegations by competent evidence to the satisfaction of the Court. (Cases cited.) In passing upon the application, the Court exercises judicial judgment."

If the alien has a statutory right to submit his petition and evidence to a court and if he is bound to satisfy the court of his eligibility to citizenship, it follows that the trial court must have jurisdiction or it would be without power to pass upon the right to citizenship as prayed for in the petition for naturalization, which it is evidently required to do under the *Tutun* case.

A question of jurisdiction might be presented if the sole ground of invoking the jurisdiction of the District Court was, for example, diversity of citizenship and no such fact appeared on the face of the complaint, or, if this were a petition to prove a will or to quiet the title to lands and no federal question was set out in

the complaint; in such a case the Court could well say at the outset that the matter was one of which jurisdiction was denied to it and, therefore, could not be heard. But when there is presented to the United States District Court a petition of a matter of which the Court has jurisdiction under the Statutes and that fact appears on the face of the petition, then the trial court is empowered to hear the matter, and whether it finally grants or denies the petition goes to the merits of the case and not to the jurisdiction. For the trial court in its discretion to have ordered a judgment denying the petition for naturalization for the reason that it could not proceed to final action or enter a valid order of naturalization because of the particular procedural defect is one thing, but to hold that because of a failure to comply with a procedural requirement, it had no jurisdiction of the proceedings or right to pass upon the petition is entirely another matter.

D. *Since the Trial Court Had Jurisdiction It Possesses the Inherent Judicial Power of Curing Defects in Its Discretion.*

We submit that the power of amendment exists in naturalization proceedings. If it did not, as suggested by Judge Learned Hand in *In re Denny*, 240 Fed. Rep. 845, it would be the only form of legal proceeding in which it is not now allowed; just as it was declared in *Tutun vs. United States*, 270 U. S. 579, that "a denial

of a review in naturalization cases would engraft an exception upon an otherwise universal rule."

Section 954 of the United States Revised Statutes (Comp. St. Sec. 1591) confers the power of amendment in these comprehensive terms:

> "No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect, or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe."

See *Underwood Cont. Corp. vs. Davies*, 287 Fed. 776.

Rule 19 of the Equity Rules, as promulgated by this Court on November 12, 1912, provides:

> "The court may at any time in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleading or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. The court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

As further indicating the increasing liberality in Federal procedure in respect to amendment, attention is called to Section 274-a of the Judicial Code, enacted March 3, 1915, where it is provided that "the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice" in any case where it shall be found that a suit at law should have been brought in equity or that a suit in equity should have been brought at law.

The power of courts generally to cure defects and amend pleadings is too well established to require numerous citations of authorities. It is one of the fundamental discretionary rights of the courts.

Mexican Central Railway vs. Pinkney, 149 U. S. 194 @ 200.

In re Wight, 134 U. S. 135 @ 146.

The effect of the decision of the Circuit Court of Appeals upon the United States District Courts, however, is to deprive them of this inherent discretionary power. Under the ruling below, the trial courts are bound inexorably by the letter of the law and are without power to determine judicially what procedural requirements are mandatory and what regulatory, or to decide whether a formal or procedural defect may be cured by proper order in conformity with the facts existing at the time of the hearing. It makes courts of naturalization purely administrative or clerical functionaries. Unless there be some controlling basis therefor there appears no reason for holding that a United States District Court loses its discretionary judicial powers when acting in naturalization cases.

E. *Assuming that the Particular Defect Is Jurisdictional Rather Than Procedural, the Trial Court Has Power to Permit Jurisdictional Averments Through Amendments.*

The power of amendment has been frequently exercised in respect to jurisdictional matters. Thus, although a bill in equity must set forth the facts establishing the diversity of citizenship of the parties to a suit, it has been decided that failure to make proper allegations as to this essential jurisdictional fact may be supplied by amendment.

The decisions upon this subject are collated in the opinion of Mr. Justice Sanford, then District Judge, in *McEldowney vs. Card*, 193 Fed. Rep. 475, where he said:

> (193 Fed. Rep. 483) "Plainly, therefore, the declaration fails to aver the necessary diversity of citizenship of the parties at the time the suit was commenced so as to give this court jurisdiction of the controversy; and this defect in the pleadings is not supplied by any other portion of the record. The plaintiff, however, has asked leave to now amend his declaration by alleging that he is and was at the commencement of this suit a citizen of Kentucky and that the bankrupt is and was at the commencement of this suit a citizen of Kentucky, and in support of this application has tendered affidavits showing such citizenship of the plaintiff and a certified copy of the charter of the bankrupt showing it to be a Kentucky corporation. The authority of the trial court to permit, in the exercise of its discretion, amendments to the pleadings making necessary jurisdictional aver-

ments, even after a case has been remanded by the appellate court for want of such averments, is well settled. *Continental Ins. Co. vs. Rhoads*, 119 U. S. 237; *Menard vs. Coggan*, 121 U. S. 253; *Horne vs. Hammond Co.*, 155 U. S. 393; *Cooper vs. Newell*, 155 U. S. 532; *Tug River Co. vs. Brigel*, 67 Fed. 625; *Betzoldt vs. Insurance Co.*, 47 Fed. 705."

To the same effect is *Atchison, T. & S. F. Ry. vs. Gilliland*, 193 Fed. Rep. 608, 611.

In *Howard vs. de Cordova*, 177 U. S. 609, Mr. Justice White said:

> "Whilst the demurrer which the court below maintained was predicated solely on the fact that there was a want of jurisdiction because of the proceedings had in the State court, which the bill assailed for want of jurisdiction and fraud, we have observed that the citizenship of Smolenski is not averred in the bill. *This defect was curable by amendment, and it was not only within the power but the duty of the court, on its attention being called to the fact, to have allowed such an amendment to be made.*" (Italics supplied.)

See, too, *Kinney vs. Columbia Savings & Loan Assn.*, 191 U. S. 78.

The existence of diversity of citizenship as a condition of jurisdiction is a constitutional requirement. If the omission to show by proper allegation in the bill or declaration, the existence of such diversity of citizenship at the time of the commencement of the action, may be cured by amendment, it would seem to follow that the filing of the petitioner's arrival certificate with the clerk and its physical attachment to the petition by order of court before the decree of naturalization was

made, are equally sufficient to cure the defect in the petition as originally filed. This is especially true when one considers the facts set forth in the opinion of Judge Geiger, *supra*, the arrival certificate so attached having emanated from the Department of Labor, having been actually on file seventy days prior to the motion, and there being no suggestion that the Government had been impeded in its investigation into the merits of the application.

In *Norton vs. Larney*, 266 U. S. 511, the same course was pursued in a suit to quiet title to land allotted to the appellee as a citizen of the Creek National. There jurisdiction depended upon whether the suit arose under a law of the United States. The allegation of the facts on which jurisdiction depended was found to be insufficient to establish jurisdiction. No objection on jurisdictional grounds was raised in the District Court, but it was presented in the Circuit Court of Appeals, which held that the District Court had jurisdiction. When the case came to this Court the question of jurisdiction was again discussed. Mr. Justice Sutherland said:

> (266 U. S. 515) "It is quite true that the jurisdiction of a Federal court must affirmatively and distinctly appear and cannot be helped by presumptions or by argumentative inferences drawn from the pleadings. If it does not thus appear by the allegations of the bill of complaint, the trial court, upon having its attention called to the defect or upon discovering it, must dismiss the case, unless the jurisdictional facts be supplied by amendment. And where, as here, the jurisdictional facts appear upon the face of the record; where the very contention of the party interpos-

> ing the challenge to the jurisdiction is such as to plainly establish it, beyond the possibility of successful dispute, thus eliminating any element of surprise; and where the amendment must necessarily be allowed by the trial court, it would be mere ceremony to reverse the decree and remit the purely formal making of the amendment to the lower court. We shall, therefore, consider the bill as amended to conform to the facts of record and sustain the jurisdiction of the district court."

If the iron rule applied by the majority of the Judges constituting the Circuit Court of Appeals in this case were to be applied in naturalization proceedings, in which informality is the rule rather than the exception, where the applicants are especially unfamiliar with legal proceedings, and where, as pointed out by Judge Alschuler in the dissenting opinion herein (R. 29) (21 F. (2d), 31), it is manifest from the departmental rules and regulations made pursuant to the statute "that the alien is not expected to employ counsel to pilot him through the maze of statutory requirements and forms, departmental rules, and court proceedings," but that on the contrary "it is contemplated and required that the naturalization officers and the clerk extend their assistance to the alien in the preparation and presentation of the necessary papers," then much hardship and injustice is likely to result.

While the requirements of the statute must be observed, it is believed not to be essential that the petition as originally filed shall be free from defect so long as at the time of action by the court upon the petition the statutory requirements have been fully complied with and the Government will if it desires be accorded

an opportunity to conduct further investigation before the rendition of a decree of naturalization. *United States v. Doyle*, 179 Fed. Rep. 687.

II.

RIGHTS OF THE GOVERNMENT UPON A JUDGMENT OF NATURALIZATION.

Assuming then, as we must, that the particular petition now questioned, presented to the District Court a petition setting forth substantially a claim under a Federal Statute which the Court, therefore, had power to consider and pass upon, we come to the question of the right and the extent of the power of the Government to act upon a judgment of naturalization which has been granted upon a defect in procedure.

A. *Independent Suit Under Section 15 for Cancellation Must Be Grounded Upon Showing of Good Cause.*

In the event of an "illegally procured" certificate of naturalization, the Government has the right to institute an independent suit under Section 15 to set aside the certificate. The legality of this proceeding in a proper case is not questioned by appellant nor could it be doubted in the face of decisions of this Court.

United States vs. Ness, 245 U. S. 319.

The statute requires, as a prerequisite to such a suit, however, an "affidavit showing good cause there-

for." Does the affidavit in this case (R. 4) fulfill this requirement?

It is not pretended that there was any fraud in the proceedings for the petitioner's naturalization; nor is there any pretense that there was any misconduct in connection with such proceedings.

The case rests entirely on the claim that the certificate was "illegally procured." The only claim of illegality is that set forth in the affidavit of Chief Naturalization Examiner Schlottfeldt, which was made a part of the petition in this suit and which is the only showing attempted to be made on behalf of the Government of "good cause" for the institution of proceedings under Section 15.

That resolves itself to this: That the petition for naturalization was filed on November 13, 1923; that the "arrival certificate" was issued by the Department of Labor on November 24, 1923, was mailed on December 3, 1923, to the clerk of the court, by whom it was filed, and was attached to the petition, by order of the court, on February 11, 1924, prior to the granting of the order or decree of naturalization.

When the court acted, therefore, the "arrival certificate" was physically attached to the petition. The Government knew of it, because it was forwarded to the clerk by the Department of Labor. There is no pretense that the Government asked for further time to investigate, or that the petitioner did not in all respects conform strictly with the requirements of the statute. The existence of the jurisdictional facts was, therefore, necessarily conceded. The only objection raised was that, at the time the petition was filed, the "arrival certificate" was not attached to it, although

it was actually filed with the Clerk seventy days before the hearing, in which the Government's representative participated.

We contend that these facts do not constitute a showing of "good cause" that the certificate of citizenship was "illegally procured."

In *United States v. Salomon*, 231 Fed. Rep. 461, affd. 231 Fed. Rep. 928, it was shown that Section 6 of the Naturalization Act provided that final action on petitions for naturalization would be had only on stated days, to be fixed by rule of court, and that in no case should final action be had upon a petition until at least ninety days had elapsed after filing and posting of such petition. It was held that these provisions were directory, at least when applied to persons applying under special acts, and that it was within the discretion of the court to naturalize, without the posting of the petition, a person known to the judge to be patriotic, honorable and law-abiding. The failure to post was only an "irregularity" and not an "illegality."

In the opinion of Judge Walker in the Circuit Court of Appeals, *United States v. Salomon*, it was said:

> (231 Fed. 929) "The remedy given by the statute is the means provided for protecting the right of the Government to contest applications for naturalization and for excluding from citizenship those who, under the law, are not entitled to the privilege. The statute does not indicate a purpose to give the remedy when there has been no injury. The district attorneys are authorized to institute proceedings, only 'upon affidavit showing good cause therefor.' The affidavit upon which this suit was instituted amounted to nothing more

> than an assignment of error of law apparent upon the face of the naturalization proceedings. It states no fact from which it may be inferred that the ground for contesting the application existed, or that the result might have been different if all the requirements of the statute had been complied with in the naturalization proceedings. It cannot be supposed that it was in the contemplation of the lawmakers that an affidavit would be sufficient to put upon the district attorney the duty of instituting the proceeding provided for if it showed no more than this one discloses. We think it is manifest that it was intended that the required affidavit should state facts constituting 'good cause' for instituting the proceeding, and should do more than point out errors of law in the procedure which led up to the naturalization. The conclusion is that the statutory remedy would be perverted from its obvious purpose of safeguarding things of substance, if it is permitted to be successfully resorted to without any showing that the issue of the attacked certificate of citizenship might properly have been denied at the time it was granted, if the procedure had been a strict compliance with all statutory requirements."

In *United States v. Richmond*, 17 F. (2d) 28, (C. C. of A., 3rd Ct.), these cases are cited with approval, particularly the opinion of Judge Walker in *United States vs. Salomon* (231 Fed. 928) quoted, supra p. 21, in passing upon the question of the failure of the Government to make out a showing of "good cause" as the basis for a suit under Section 15.

B. *"Illegally Procured" Must Be Distinguished From Decree Based on Procedural Defect.*

That the remedy under Section 15 is lawful to set aside a certificate granted to one illegally in the sense

that such person was never entitled to receive the same is conceded for as this Court said in *Luria v. U. S.*, 231 U. S. 9,

> (231 U. S. 24) "It does not make any act fraudulent or illegal that was honest and legal when done, imposes no penalties, and at most provides for the annulment, by appropriate judicial proceedings, of merely colorable letters of citizenship to which their possessors never were lawfully entitled."

But the Government would stretch this interpretation of the extent of the remedy under Section 15 to include the class of cases, such as the one at bar, where the qualifications of the applicant are conceded by the Government and the sole basis for the action of cancellation is the technical, procedural defect caused by the Government's failure to supply the "certificate of arrival" at the time of filing of the petition for naturalization, though subsequently and 70 days prior to final hearing supplied by it to the Clerk of the District Court.

It is this defect which the Government deems so unlawful as to mark the judgment of naturalization as having been "illegally procured."

The Century Dictionary defines the word "Illegal" as follows:

> "Not legal, contrary to law, unlawful; illicit; as, an *illegal* act; *illegal* commerce. It naturally implies substantial contravention of law, as distinguished from mere irregularity in procedure, and from error in judicial decision."

"Procure" is defined in the Century Dictionary as follows:

> "2. To bring about by care and pains; effect; contrive and effect; induce; cause: as, he *procured* a law to be passed."

In 31 Corpus Juris, 242, 243, there are collated various decisions defining the words "illegally" and "illegality," which are summarized thus:

> "Illegality. That which is contrary to the principles of law as distinguished from mere rules of procedure. Illegality is properly predicable of radical defects only; it denotes a complete defect in the proceedings."
>
> "Illegally. Contrary to law; unlawfully. Phrases: 'Acting illegally,' 'illegally dealing,' 'illegally divert,' 'illegally or fraudulently conducted,' 'illegally procured,' 'illegally withheld'."

The juxtaposition of the words "fraud" and "illegally procured" in Section 15 as the two grounds upon which suit may be brought for the purpose of setting aside and cancelling a certificate of citizenship, indicates that illegal procurement was to be an act similar in character to "fraud." Something sinister or its equivalent was intended. The rule of *noscitur a sociis* should be applied.

Barlow v. United States, 7 Pet. 411.

Neal v. Clark, 95 U. S. 709.

Patten v. United States, 159 U. S. 509.

People v. N. Y. & M. R. R. Co., 84 N. Y. 565.

People v. Richards, 108 N. Y. 137.

The meaning of the phrase "illegally procured" is thus briefly referred to under this heading but is more

fully discussed in connection with the argument which follows this point.

C. *Government's Remedy Upon Judgment in Which Procedural Defect Has Occurred Is Through Appeal Only.*

Prior to the decision in *Tutun v. United States*, 270 U. S. 568, there may have been some doubt as to the right of appeal in naturalization cases. But since the decision in that case all doubts have been set at rest. While that decision does not attempt to draw a clear cut line between cases in which the Government has its remedy under Section 15, as pointed out in *United States v. Ness*, 245 U. S. 319, the *Tutun* case clearly indicates that every naturalization judgment sought to be attacked is not within the scope of Section 15 when the Court says:

> (270 U. S. 579) "The remedy afforded to the Government by Section 15 is narrower in scope than the review commonly afforded by the appellate courts. Moreover there is no corresponding provision which would afford to the applicant for citizenship an independent remedy for correcting errors committed in the District Court."

In keeping with the spirit of this quotation from the *Tutun* case as well as the quotation from *Luria vs. U. S.*, 231 U. S. 9, supra p. 23), a number of the Circuit Courts of Appeals have announced decisions interpreting the meaning of "illegally procured" and distinguishing between cases in which the Government has its remedy through independent suit and those in which it is limited to appeal only.

In *United States v. Richmond*, 17 F. (2d), 28, (3rd C. C. A.), the recent decisions of this Court are reviewed and distinguished. There the Court in interpreting the phrase "illegally procured" and distinguishing between a certificate obtained by an affirmative unlawful act calling for the exercise of power under Section 15 and one obtained through an irregularity in procedure correctible on appeal only says:

> (17 F. (2d) 30) "Now to the words 'procured,' 'illegally procured,' coupled in this statute with fraud, as it is, must be attributed the purpose of Congress to use those words in their commonly understood meaning, as evidencing a positive, affirmative act on the part of the procurer, and one of a sinister character. • • • And that these words meant something sinister, and the purpose of Congress so to use them, is evidenced by the legal authorities where, for example, in 2 Corpus Juris, 1126, commenting on the act, it is said: 'While there is some difference of opinion as to the meaning of the terms 'illegally procured,' the better rule seems to be that it imports a certificate issued without authority of law, and, in effect, false and spurious; not an error of law but subornation, or some other illegal means, to impose on the court.' Did Congress mean these words to apply to a case where there was no fraud, no improper or illegal act done by the applicant; to a situation where protection against irregularity was already provided for by the Government's right to appear, and, if wronged, to appeal; to a case where an applicant was, as Richmond admittedly was, both by the actual proofs and the testimony of himself and witness, qualified for citizenship, and where the alleged ground of cancellation was not anything done or procured by the applicant, but wholly the act and possible error of the judge?"
>
> • • • • •

(p. 31) "In the absence of an authoritative and controlling decision otherwise construing the term 'illegally procured,' we are inclined to the view that the decree of the Court in this case—mistakingly made as it possibly was—was not 'illegally procured' within the meaning of this statute, but was an irregularity in procedure correctible on appeal and presented a situation the statute was not meant to cover. Bearing on that question, we note that the United States, by virtue of Section 11 of the Act of 1906 was, by its representative, the naturalization officer, represented and in court when Richmond's petition was heard; that by that statute it was given the right to be heard in opposition to the granting of any petition in naturalization; that it knew of the decree which was entered by the judge, and in pursuance of such decree and reciting it as its ground for doing so, it subsequently, by its naturalization bureau, issued to Richmond his and its certificate on such decree.

"The United States, being present and, therefore, a party with a litigant's rights in this naturalization proceeding, had the right to object to any error or irregularity and, if disatisfied with the decree, to appeal therefrom."

Attention is called, too, to *United States v. Pandit*, 15 F. (2d) 285, (9th C. C. A.), in which that Court says:

(15 F. (2d) 286) "Courts often speak of erroneous rulings and always as meaning such as deviate from or are contrary to the law, but the terms 'erroneous' is never used by courts or law writers as designating a corrupt or evil act.

(P. 289) "By the same token erroneously granting naturalization to the defendant, the right to citizenship having distinctly been put in issue, the United States appearing and contesting, and the issue directly determined by a court of competent jurisdiction, the judgment not having been modified or reversed, cannot now be disputed."

In *United States v. Salomon (D. C.)*, 231 Fed. 461, and affirmed (C. C. A. 5th Cir.) 231 Fed. 928, the Court says:

> (231 Fed. 464) "Irregularity is not synonymous with illegality. Illegality denotes a radical defect, while irregularity is a want of adherence to some prescribed rule or mode of proceeding."

Again in *United States v. Svednik*, 19 F. (2d) 71 (3 C. C. A.), an action by the Government for cancellation of a certificate of naturalization brought under Section 15 the Court there says:

> (19 Fed. (2d) 71) "The underlying primary question here involved is whether the remedy of cancellation here sought could be availed of under the fifteenth section of the act of June, 1906, (Comp. St. Sec. 4374). Was the certificate, in the words of the said act, 'illegally procured'? (Quotation from the Richmond case, 17 F. (2d) 28, follows) * * * The question before the Court is one of fact and legal construction, namely, whether the absence of the applicant from the country with the intention of returning was a compliance with the statutory requirement of a continuous residence. *That question the naturalization judge held in favor of the applicant under the facts of the case. If he was mistaken, the remedy of the government which was represented at the hearing, was by appeal.*" (Italics and parenthesis ours.)

Reading these cases of the Circuit Courts in the light of the language of the cases in this Court, it follows that Section 15 applies only to cases where the applicant either fradulently imposed upon the Court or was not qualified for citizenship under the statutes or failed to comply with a substantive requirement of the statute, as in the *Ness* case (245 U. S. 319); but

clearly the remedy sought to be exercised in this case was not intended to permit the Government to institute an independent action at any time to annul a judgment of naturalization, free from fraud or any substantive shortcoming, because of mere informality or irregularity in procedure from which no appeal was taken.

To the same effect is the opinion of Judge Amidon in the well-considered case of *United States v. Lenore*, 207 Fed. Rep. 865, 869; also *United States v. Erickson*, 188 Fed. Rep. 747.

This Court must have had such distinction in mind when it said in the *Ness* case:

> (245 U. S. 325) "Opposition to the granting of a petition for naturalization may prevail (under Section 11), because of objections to the petitioner or weight of evidence, or the credibility of witnesses, or mere irregularities in procedure. A decision on such minor questions, at least of a State court of naturalization, is, though clearly erroneous, conclusive even as against the United States if it enter an appearance under Section 11."

And, for the reasons stated by Judge Geiger (R. 16), there would appear to be no purpose or ground for applying a different rule to United States Courts.

III.

IMPORTANCE OF PARTICULAR STATUTORY REQUIREMENT.

A. *Necessity of Filing Certificate of Arrival.*

That the filing of the "certificate of arrival" is "an essential pre-requisite to a valid order of naturalization," (*United States v. Ness*, 245 U. S. p. 322) is not questioned, following the ruling of the *Ness* case and the reasons therein assigned for so holding. But it is one thing to hold that the certificate of arrival must be present before an order of naturalization can issue and another thing to hold that the statutory requirement providing for filing at a particular time is just as important and essential as the certificate itself.

B. *Harmlessness of Trial Court's Order.*

As was said by Judge Geiger in his opinion

> (R. 7, 13 F. (2d) 662) "No suggestion was made that the Government had been impeded in exercising its right to appear or in its attempted examination of the merits, by any lapse either in filing or actual physical attachment."

And as Judge Alschuler stated in his dissenting opinion:

> (R. 7, 21 F. (2d) 31) "If question arose about the certificate, or the identity of the applicant with the person described in it, the Court would,

on the Government's suggestion, grant time for further investigation, and refusal to do so might as once stated by this Court, be an improper exercise of discretion. *United States vs. Doyle*, 179 Fed. 687."

In brief, the Government's rights were in no way affected and at the time of the order for judgment every requirement of the statute had been fulfilled. The petition, the petitioner, the necessary witnesses and the exclusive and conclusive proof of lawful entry, i. e., the "arrival certificate" were before the Court. The trial court being advised of the procedural error, cured it by order, and then finding that the petitioner was qualified, as admitted by the Government, and that all proofs were satisfactory, ordered the judgment of naturalization. It had acted in "furtherance of justice," had denied no request for additional time, had not affected the rights of any one connected with the proceedings.

C. *Requirement of Attachment Is Not Mandatory.*

The Circuit Court has cited as its authority the case of *French v. Edwards*, 13 Wall. (80 U. S.) 506, for the proposition that the statutory requirement as to the time of filing is mandatory. That very case (involving the method by which a sheriff sold property for taxes) indicates that "regulations designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected" are usually directory only. The Government on its brief below stressed the im-

portance of literal enforcement and mandatory interpretation of the statute on the grounds of "order, system and dispatch"—the very reasons given in the French case for holding it a directory provision.

Further, it is one thing to hold regulations for the guidance of an administrative official to protect the property of a citizen as mandatory, and another to consider every statutory procedural requirement as literally binding on the District Courts.

IV.

THE DECREE ADMITTING THE PETITIONER TO CITIZENSHIP RENDERED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN ON FEBRUARY 11, 1924, IS RES JUDICATA AS TO THE ISSUE TENDERED BY THE GOVERNMENT IN THIS PROCEEDING TAKEN UNDER SECTION 15 OF THE NATURALIZATION ACT.

The defense of *res judicata* was pleaded by the petitioner. In the brief on behalf of the Government in opposition to the application for a writ of certiorari, it is admitted that this defense was properly raised in the pleadings and that the facts on which it is based appear in the petition for cancellation. There it is shown that when, in the naturalization proceeding, the petitioner's application came on for hearing before the United States District Court, objection was made to the granting of the petition by the Assistant Chief Naturalization Examiner on behalf of the Govern-

ment, on the precise ground which is now made the basis of the action brought under Section 15, and that the objection was overruled by the court and the petitioner was admitted to citizenship and received her certificate accordingly (R. 4, 5).

Section 11 of the Naturalization Act reads:

> "That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence and be heard in opposition to the granting of any petition in naturalization proceedings."

No appeal was taken from the decree admitting the petitioner to citizenship, and more than a year elapsed thereafter before this proceeding was instituted. The original proceeding was clearly an adversary proceeding, and the question therein litigated was determined by the decree rendered.

In the present proceedings no new question of fact or of law is raised. The records in both proceedings are practically identical. It is not pretended that the petitioner was guilty of any fraud, or that she herself did anything which constituted "illegality." What is now alleged to be the infirmity in the original proceeding was brought to the attention of the court by the representative of the Government. The original petition was granted. There was no request on behalf of the Government for further time in order to carry on any investigation, and no further facts appear to have been discovered after the lapse of sixteen months.

Since the decision in *United States v. Ness*, *supra*, this Court in *Tutun v. United States* and *Neuberger v. United States*, (270 U. S. 568), has definitely considered the nature of naturalization proceedings, and has not only held that an order or decree granting a petition for naturalization is reviewable, but that in passing upon the application the court exercises judicial judgment and that, by Section 11 of the Naturalization Act, the full rights of a litigant are expressly reserved to the Government and its contentions are submitted to the court for adjudication.

Unless there is controlling reason, therefore, to exclude such an adjudication from the general principles applicable to the doctrine of *res judicata*, one would suppose that such an adjudication as was made in the original proceedings estops the Government from relitigating the only proposition as to which an issue was raised in the earlier proceeding.

In the Brief of the Government in opposition to the application for a writ of certiorari herein, it is said (p. 15):

> "Some uncertainty now exists as to the extent to which judgments in naturalization proceedings estop the United States to litigate in suits under Section 15 questions raised by it and decided against it in the naturalization proceedings."

The first case which came before this Court under Section 15 is *Johannessen v. United States*, 225 U. S. 227. There it was charged by the Government that the appellant procured from the court a certificate of citi-

zenship in less than four years after he arrived in the United States, and that the certificate was based upon the perjured testimony of two witnesses, to the effect that he had resided within the limits and under the jurisdiction of the United States for five years at least prior to that time. The facts were not discovered by the Government until five and a half years later, when the appellant admitted them. The Government did not appear in the naturalization proceedings, and the effect of such appearance, if any there had been, was not passed upon, Mr. Justice Pitney saying:

> (225 U. S. 237) "What may be the effect of a judgment allowing naturalization in a case where the Government has appeared and litigated the matter does not now concern us. (See 2 Black, Judgts., Sec. 534, a.) What we have to say relates to such a case as is presented by the present records, which is the ordinary case of an alien appearing before one of the courts designated by law for the purpose, and, without notice to the Government and without opportunity, to say nothing of duty, on the part of the Government to appear, submitting his application for naturalization with *ex parte* proofs in support thereof, and thus procuring a certificate of citizenship."

In the opinion the Court further emphasizes the distinction on which we rely:

> (225 U. S. 238) "The foundation of the doctrine of *res judicata*, or estoppel by judgment, is that both parties have had their day in court. 2 Black, Judgts., Sects. 500, 504. The general principle was clearly expressed by Mr. Justice Harlan, speaking for this Court in *Southern Pacific R. Co. vs. United States*, 168 U. S. 1, 48: 'That a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed

> in a subsequent suit between the same parties or their privies.' Sound reason, as we think, constrains us to deny to a certificate of naturalization, procured *ex parte* in the ordinary way, any conclusive effect as against the public."

In *United States v. Ginsberg*, 243 U. S. 472, it does not appear that, at the time of the granting of the order of naturalization, there was any appearance on behalf of the Government under Section 11. It does appear from the form of the question certified that, after the applicant's petition had been first presented in open court, the hearing thereon was passed to and finally held in the chambers of the judge adjoining the court room, on a subsequent day and at an earlier hour than that to which the court had been regularly adjourned. In other words, there was no proceeding in court. It also appeared that the certificate was illegally procured, in that, upon the uncontradicted evidence at the hearing upon the petition, it was shown indisputably that the petitioner was not qualified by residence for citizenship. There is, therefore, nothing in the decision which bears on the subject of *res judicata*.

In *United States v. Ness*, *supra*, the naturalization proceedings were instituted in a State court of Iowa. The applicant never filed an "arrival certificate" and suit was brought in the Federal court to cancel the certificate of citizenship on the allegation that it had been "illegally procured" for the reason stated. The first proposition passed upon was as to whether the filing of the "arrival certificate" is an essential prerequisite to a valid order of naturalization. It was held that it was. The question next considered was whether the

order entered in the proceeding in the State court, to which the United States became a party under Section 11, was *res judicata*. After noting that this question had been left undecided in *Johannessen v. United States, supra*, the Court said:

> (245 U. S. 325) "The remedy afforded by Section 15 for setting aside certificate of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments, * * *; but it is narrower in scope than the protection afforded under Section 11. Opposition to the granting of a petition for naturalization may prevail, because of objections to the competency or weight of evidence or the credibility of witnesses, or mere irregularities in procedure. *A decision of such minor questions, at least of a State court of naturalization, is, though clearly erroneous, conclusive even as against the United States if it entered an appearance under Section 11.* For Congress did not see fit to provide for a direct review by writ of error or appeal. * * * It was the purpose of Congress, by providing for appearances under Section 11, to aid the court of naturalization in arriving at a correct decision and so to minimize the necessity for independent suits under Section 15. * * * But in our opinion Section 11 and Section 15 were designed to afford cumulative protection against fraudulent or illegal naturalization."

It may be here stated parenthetically that in the State courts judgments granting or denying petitions for naturalization have generally been held to be reviewable on appeal like other cases. This is shown by the cases collated in the note on page 575 of the decision in *Tutun v. United States*.

In *United States v. Pandit*, 15 F. (2d) 285 (certiorari denied, 273 U. S. 759), decided by the Circuit

Court of Appeals for the Ninth Circuit, the applicant had been admitted to citizenship on May 7, 1914. At the hearing the United States appeared by an examiner of the Bureau of Naturalization and contested the applicant's right to naturalization on the ground that he was not "a free white person" within the meaning of the Naturalization Act. Proceedings were then instituted under Section 15 for the cancellation of the certificate on the same grounds as were presented by the Government on the original hearing. It was held that the judgment granting the certificate, being a final judgment, was conclusive as to all *media concludendi* and not affected by the correctness of the findings supporting it, and could not be impeached by showing that it was based on a mistake of law; consequently, that the case was governed by the doctrine of *res judicata*. After quoting the passage from *Johannessen v. United States, supra*, Judge Neterer said:

> (P. 287) "The court in this decision recognized the doctrine of *res judicata*, except in *ex parte* cases, applicable to a naturalization hearing."

After citing *Tutun v. United States* and *Mutual Benefit Life Ins. Co. v. Tisdale*, 91 U. S. 238, 245, the opinion continues:

> "It is thus conclusively established by the Supreme Court that a judgment granting a certificate of naturalization is a final judgment. The correctness of the findings to support the judgment does not affect it. *Milne vs. Deen*, 121 U. S. 525. And it is conclusive as to all *media concludendi*, and cannot be impeached by showing that it was based on mistakes of law. *Fauntleroy vs. Lum*, 210 U. S. 230; *American Express Co. vs. Mullins*, 212 U. S. 311."

The opinion of Mr. Chief Justice Taft in *North Carolina R. Co. v. Story*, 268 U. S. 288, 292, was also quoted:

> "Coming now to the merits, it may be conceded that the first judgment against the company in favor of the administrator, however erroneous it was in view of the cases of *Missouri Pac. R. Co. vs. Ault*, 256 U. S. 554, and *North Carolina R. Co. vs. Lee*, 260 U. S. 16, not having been appealed, was *res judicata*."

Then follows the concluding paragraph in the *Pandit* case:

> (15 F. 2d 287) "By the same token erroneously granting naturalization to the defendant, the right to citizenship having been distinctly put in issue, the United States appearing and contesting, and the issue directly determined by a court of competent jurisdiction, the judgment, not having been modified or reversed, cannot now be disputed."

In *United States v. Richmond*, 17 F. 2nd, 28, decided by the Circuit Court of Appeals for the Third Circuit, it was held that the certificate of citizenship issued after appearance by the Government under Section 11, where it was shown that the Judge had left the court room during the proceedings, during which time proof was made before the clerk, could not be cancelled in an action under Section 15. See quotation from opinion of Judge Buffington, (quoted supra p. 27) part of which follows:

> (17 F. 2d 31) "The United States being present, and therefore a party, with a litigant's rights in this naturalization proceeding, had the right to object to any error or irregularity, and, if dissatisfied with the decree, to appeal therefrom. We note here there are no after discovered facts. All

> that was done when Richmond's petition was before the court, or omitted to be done, was then and there known to the United States, and no objection made hereto."

The same court followed this decision in *United States v. Svednik*, 19 F. 2nd, 71.

See also *United States v. Lenore*, 207 Fed. 865, 869, 871.

V.

THE EFFECT UPON ALL NATURALIZED CITIZENS OF THE PREVAILING OPINION BELOW IS OF THE MOST SERIOUS CONSEQUENCE.

The danger of the decision below to the naturalized citizens of this country must be apparent. Its effect is best characterized in the language of the first paragraph of Judge Alschuler's dissenting opinion:

> (R. 28) "The principle declared in this opinion is far reaching. Its general application would subject to such collateral attack every naturalization certificate granted since the act was adopted, however in good faith granted and received, where it is shown there was in the proceedings any departure from formal procedural statutory provisions, however trivial and inconsequential, and which by no possibility did or could affect the merits."

The serious consequences of the decision of the Circuit Court of Appeals in this case cannot be exaggerated. Such an action as is contemplated by Section 15 does not seem to be barred by any statute of limita-

tions. Consequently an action of this character may be brought long after the decree of naturalization has been granted, and after real property has been acquired by the person naturalized and his status has in many ways been affected. If for instance, after the expiration of twenty years, an action were brought under precisely the same circumstances as the present, the person so naturalized would be in a sad plight. He might be unable to prove the circumstances under which his petition was presented to the court. Memories will have become dimmed and witnesses may have died or disappeared. If a decree of cancellation should be rendered, the previous declaration of intention would have lapsed and it would be necessary to make a new declaration and to suffer further delay in attaining the right of citizenship previously conferred.

In the thousands of naturalization cases before the courts each year doubtless great numbers exist wherein procedural defects have occurred without the slightest fault on the part of the applicant for citizenship. Frequently they are due to the officers of the Government. The applicant acts on the assumption that the official who prepares the petition is familiar with the filling out of the forms and is accurate in the performance of the function entrusted to him. At all events, in a case where the Government is also represented on the hearing and either no objection is made or the objection that is made is overruled by the court, it would seem that, in order to constitute a case of illegal procurement which will constitute "good cause" for the bringing of an action under Section 15, a state of facts must be presented which indicates a vital defect as distinguished from an irregularity or a technical non-

compliance with the letter of the statute, its spirit having been observed at the time of the rendition of the decree of naturalization.

VI.

In view of the facts in the case and what has herein been set out it is respectfully submitted that the judgment of the Circuit Court of Appeals for the Seventh Circuit be reversed and that of the United States District Court for the Eastern District of Wisconsin be affirmed.

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